

1 ROBERT ELIAS VENTURA (V# 80485)  
2 CORCORAN STATE PRISON (SHU)  
3 P.O. BOX 3476  
4 CORCORAN, CA., 93212.

FILED

JUN 18 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8  
9 ROBERT E. VENTURA,  
10 PETITIONER,

11 V.

12 DARREL ADAMS, WARDEN,  
13 RESPONDENT.

NO. C 08-01708 SBA (PR)

MOTION FOR RECONSIDERATION  
(F.R.C.P. RULE 60 (b) ) ;

AND AMENDED MOTION  
FOR APPOINTMENT OF

COUNSEL. (28 U.S.C.  
§ 2255 Rules, 8 (c.) ).

14  
15  
16 TO THE HONORABLE UNITED STATES DISTRICT COURT  
17 JUDGE SAUNDRA BROWN ARMSTRONG PRESIDING IN THE ABOVE  
18 ENTITLED COURT :

19 I, ROBERT ELIAS VENTURA, PETITIONER, A LAYMAN -  
20 AT-LAW, HEREIN MOVES THIS HONORABLE COURT FOR  
21 RECONSIDERATION PURSUANT TO FEDERAL RULES OF CIVIL  
22 PROCEDURE - RULE 60 (b) IN ORDER OF DENIAL ON  
23 PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL.

24 THIS MOTION IS BASED UPON THE MOVANT -  
25 PETITIONER'S AFFIDAVIT IN SUPPORT OF HIS MOTION  
26 FOR RECONSIDERATION AND AMENDED MOTION FOR  
27 APPOINTMENT OF COUNSEL IN THE FOREGOING MATTER.  
28 AS WELL AS THE WITHIN STATEMENT OF FACTS AND

1 CONTENTIONS IN MEMORANDUM OF POINTS AND  
2 AUTHORITIES .  
3

4 FACTS  
5

6 ON MARCH 28, 2008 PETITIONER FILED A  
7 NOTICE OF APPEAL IN YOUR RESPECTIVE COURT FROM  
8 FINAL JUDGEMENT AN ORDER OF DENIAL ON PETITION  
9 FOR REVIEW . ALSO, ON MARCH 28, 2008 PETITIONER  
10 FILED A MOTION FOR APPOINTMENT OF COUNSEL.

11 PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL  
12 WAS DONE HASTILY, IN LAYMAN FORM, AND LACKED  
13 ANY LEGAL STANDING . ON MAY 30, 2008, JUDGE  
14 SAUNDRA BROWN ARMSTRONG DENIED WITHOUT  
15 PREJUDICE; ON THE COURT'S SUA SPONTE RECONSIDERATION  
16 DEPENDENT OF THE COURT'S FINDING OF NECESSITY  
17 OF AN EVIDENTIARY HEARING FOLLOWING CONSIDERATION  
18 OF THE MERITS OF PETITIONER'S CLAIMS . PETITIONER'S  
19 HEREIN NOW BRINGS AN AMENDED MOTION FOR  
20 APPOINTMENT OF COUNSEL .  
21

22  
23 CONTENTIONS  
24

25 LEGAL AUTHORITY FOR APPOINTMENT AND  
26 COMPENSATION OF COUNSEL IS ARTICLE 1, SECTION  
27 §15 OF THE CALIFORNIA CONSTITUTION; THE SIXTH  
28

1 AMENDMENT OF THE U.S. CONSTITUTION; 23 U.S.C.,  
 2 SECTION § 1915(d); 18 U.S.C., SECTION § 3006  
 3 A(9), AS INTERPRETED IN MCCLAINE V. MANSON,  
 4 343 F.SUPP. 382 [D. CONN. 1972]; PAYNE V.  
 5 SUPERIOR COURT, (1975) 17 CAL. 3d 908; SALAS V.  
 6 CORTEZ (1978) 24 CAL. 3d 22; PRICE V. JOHNSON,  
 7 161 F.2d 705; YARBOROUGH V. SUPERIOR COURT,  
 8 (1983) 150 CAL. APP. 3d 388; AND CALIFORNIA'  
 9 PENAL CODE, SECTION § 1191.1, WHICH EXPRESSLY  
 10 GRANTS A RIGHT TO COUNSEL AND EQUAL PROTECTION  
 11 TO INDIGENT IMPRISONED INMATES UPON REQUEST.

12 "AS A MATTER OF EQUAL PROTECTION AND DUE  
 13 PROCESS UNDER BOTH THE FEDERAL AND CALIFORNIA  
 14 CONSTITUTIONS A PRISONER AS A DEFENDANT (OR  
 15 PETITIONER OR PLAINTIFF) IN A 'BONA FIDE LEGAL  
 16 ACTION THREATENING HIS INTEREST', IS EXPOSED TO  
 17 JUDICIALLY SANCTIONED DEPRIVATIONS AND IS ENTITLED  
 18 TO ACCESS TO THE COURTS IN ORDER TO HAVE A  
 19 'MEANINGFUL OPPORTUNITY TO BE HEARD AND TO  
 20 HAVE ASSISTANCE OF COMPETENT COUNSEL!'"

21 YARBOROUGH V. SUPERIOR, SUPRA CITING PAYNE  
 22 V. SUPERIOR COURT, SUPRA.

23 MOREOVER, PETITIONER REQUESTS THAT  
 24 COUNSEL BE APPOINTED IN THIS MATTER SO THAT  
 25 PETITIONERS INTERESTS MAY BE PROTECTED BY  
 26 THE PROFESSIONAL ASSISTANCE REQUIRED. Additionally,  
 27 WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE,  
 28 COUNSEL MUST BE APPOINTED FOR AN INDIGENT

PETITIONER WHO REQUESTS COUNSEL. (18 U.S.C. § 3006 A. (9).) IF AN EVIDENTIARY HEARING IS ORDERED, THIS DISCRETIONARY POWER BECOMES A MANDATORY RULE FOR APPOINTMENT. (FEDERAL HABEAS RULE 8(C).) GENERAL COUNSEL SHOULD BE APPOINTED WHERE "FUNDAMENTAL FAIRNESS" REQUIRES IT. (SEE SCHULTZ V. WAINWRIGHT (11TH CIR. 1983) 701 F.2d 722, 728-730; Williams V. MISSOURI (8TH CIR. 1981) 640 F.2d 140, 144 CERT. DEN. 451 U.S. 990; SEE WIKES § 8-41.)

FEDERAL JUDGES ALSO HAVE THE DISCRETION TO APPOINT COUNSEL IN OTHER CIRCUMSTANCES IF IT IS IN THE INTERESTS OF JUSTICE; COURTS MAKING SUCH A DETERMINATION WILL CONSIDER THE STRENGTH OF THE ISSUES, THE PETITIONERS ABILITY TO ARTICULATE THE CLAIMS AND THE COMPLEXITY OF THE CASE. (18 U.S.C. § 3006 A, 28 U.S.C. §§ 1915 (d), 2254 (h) FEDERAL RULES OF HABEAS CORPUS, RULE 8(C); BASHOR V. RISLEY (9TH CIR. 1984) 730 F.2d 1228.)

IN CERTAIN EXCEPTIONAL CIRCUMSTANCES, THE COURT MAY REQUEST THE VOLUNTARY ASSISTANCE OF COUNSEL PURSUANT TO 28 U.S.C. § 1915 (C)(1). TERREL V. BREWER, 935 F.2d 1015, 1017 (9TH CIR. 1991). [A FINDING OF EXCEPTIONAL CIRCUMSTANCES REQUIRES AN EVALUATION OF BOTH THE LIKELIHOOD OF THE PETITIONER TO ARTICULATE HIS CLAIMS PRO SE IN LIGHT OF THE COMPLEXITY OF THE LEGAL ISSUES

1 involved ; NEITHER OF THESE FACTORS IS DISPOSITIVE  
 2 AND BOTH MUST BE VIEWED TOGETHER BEFORE  
 3 REACHING A DECISION. WILBURN V. ESCALDERON ,  
 4 789 F. 2d 1328 AT 1331 ( 9TH CIR 1986) TERREL  
 5 DEMONSTRATED SUFFICIENT WRITING ABILITY AND  
 6 LEGAL KNOWLEDGE TO ARTICULATE HIS CLAIM. ] ;  
 7 WOOD V. HOUSEWRIGHT , 900 F. 2d 1332, 1335-  
 8 36 ( 9TH CIR. 1990) [10] COUNSEL SHOULD ONLY  
 9 BE APPOINTED IN EXCEPTIONAL CIRCUMSTANCE ,  
 10 BASED ON SUCH FACTORS AS THE LIKELIHOOD OF  
 11 SUCCESS ON THE MERITS AND THE ABILITY OF THE  
 12 PETITIONER TO ARTICULATE HIS CLAIMS IN LIGHT OF  
 13 THEIR COMPLEXITY. WILBURN V. ESCALDERON , 789  
 14 F. 2d 1328 AT 1331 ( 9TH CIR. 1986). THE INSTANCES  
 15 THAT WOOD CLAIMS INDICATE THE PRESENCE OF THESE  
 16 FACTORS ARE DIFFICULTIES WHICH ANY LITIGANT WOULD  
 17 HAVE IN PROCEEDING PRO SE ; THEY DO NOT INDICATE  
 18 EXCEPTIONAL FACTORS. Affirmed. ]

19 I DECLARE UNDER PENALTY OF PERJURY THAT  
 20 THE FOREGOING IS TRUE AND CORRECT, AND THAT THIS  
 21 DECLARATION WAS EXECUTED ON THIS DATE 6-12-08  
 22 AT CORCORAN, CALIFORNIA.

23  
 24 DATED: 6-12-08 .

25 Respectfully Submitted,  
 26 Robert Elias Ventura  
 27 ROBERT ELIAS VENTURA  
 28

11

## PRAYER FOR RELIEF

WHEREFORE, PETITIONER PRAYS FOR THE FOLLOWING RELIEF: AND IS WITHOUT REMEDY SAVE BY WRIT OF HABEAS CORPUS. WHEREFORE, PETITIONER PRAYS THAT THE COURT:

1.) GRANT MOTION FOR RECONSIDERATION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 60(b);

2.) REHEAR AND GRANT PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL;

3.) ISSUE AND ORDER TO SHOW CAUSE;

4.) CONDUCT AN EVIDENTIARY HEARING;

5.) ALLOW PETITIONER TO CONDUCT DISCOVERY;

6.) DECLARE PETITIONER'S RIGHTS;

7.) APPOINT COUNSEL AND AWARD REASONABLE ATTORNEY FEE'S;

8.) GRANT SUCH FURTHER RELIEF AS THE COURT DEEMS JUST AND PROPER.

DATED: 6-12-08

Respectfully Submitted,  
Robert Elias Ventura  
ROBERT ELIAS VENTURA  
(PETITIONER IN PRO-SE.).



PETITIONER'S AFFIDAVIT

1  
2  
3 1.) I, ROBERT ELIAS VENTURA, DECLARE THAT  
4 I AM THE PETITIONER IN THE ABOVE - REFERENCED  
5 MATTER, THAT I AM INCARCERATED AT CALIFORNIA  
6 STATE PRISON AT CORCORAN (SHU), AND THAT I AM  
7 INDIGENT AND ILLITERATE AND UNABLE TO AFFORD  
8 COUNSEL. MY TOTAL ASSETS ARE \$ 00.00 AND MY  
9 INCOME IS \$ 00.00 PER MONTH;

10 2.) I AM THE PETITIONER IN A 28 U.S.C. § 2254  
11 A PETITION FOR WRIT OF HABEAS CORPUS IN THE  
12 UNITED STATES DISTRICT COURT;

13 3.) THE ISSUES INVOLVED IN THIS CASE ARE  
14 FACTUALLY COMPLEX AND LEGALLY INTRICATE AND  
15 HARD FOR ME TO COMPREHEND AND UNDERSTAND THE  
16 CASE AT ISSUE. ( SEE EXHIBIT \_\_\_\_\_ ) ;

17 4.) PETITIONER CONTENTS THAT THE DISTRICT  
18 COURT JUDGES JUDGEMENT IN THE INSTANT  
19 MATTER WAS BASED ON AN ERRONEOUS LEGAL  
20 PREMISE OR A MISUNDERSTANDING OF THE FACTS  
21 THAT COULD BE READILY CORRECTED BY  
22 RECONSIDERATION AND REHEARING ;

23 5.) PETITIONER DOES NOT ATTACK THE SUBSTANCE  
24 OF THE DISTRICT JUDGES RESOLUTION OF HIS CLAIMS  
25 ON THE MERITS, BUT SOME DEFECTS IN THE  
26 INTEGRITY OF THE HABEAS CORPUS FEDERAL  
27 PROCEEDING ( i.e. Denial of motion for  
28 appointment of counsel. ) ;

6.) PETITIONER WON'T BECOME LITERATE AND LEARN ANY MINIMAL LAW WITHIN THE AMOUNT OF TIME IT TAKES TO PROCESS THIS 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT ;

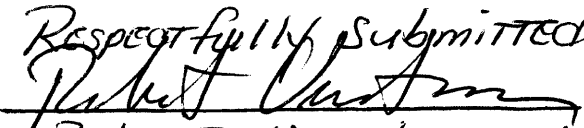
7.) PETITIONER IS CONFINED IN A SECURITY HOUSING UNIT AND HAS VIRTUALLY NO VIABLE ACCESS TO A LAW LIBRARY OR LEGAL MATERIALS ;

8.) THE PETITIONERS FRIEND ( LEONEL CANO , F#53299 ) WAS AN INMATE WHO NO LONGER RESIDES AT C.S.P. - CORCORAN (SHU) AND ASSISTED PETITIONER TO WRITE BOTH THE 28 U.S.C. § 2254 IN THE U.S. DISTRICT COURT AND THIS MOTION FOR RECONSIDERATION ;

9.) PETITIONER HAS NO ASSISTANCE IN LAW AND WITHOUT HIS FRIEND PETITIONER HAS NO ASSISTANCE IN THE LAW ;

10.) PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT ALL STAGES - TRIAL THRU APPEALS PROCESS - IN THE STATE COURT LEVEL. (SEE EX. —);

I, ROBERT ELIAS VENTURA, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, AND THAT THIS AFFIDAVIT WAS EXECUTED ON THIS DATE 6/12-08 AT CORCORAN, CALIF.

Respectfully Submitted,  
  
 ROBERT ELIAS VENTURA  
 ( PETITIONER IN PRO-SE ).



FILED

MAY 9 2008

RICHARD W. VENTURA  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. VENTURA,

No. C 08-01708 SBA (PR)

Petitioner,

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

v.

DARREL ADAMS, Warden

Respondent.

Petitioner has requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial

1 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas  
2 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
3 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent  
4 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir.  
5 1965).

6 At this early stage of the proceedings the Court is unable to determine whether the  
7 appointment of counsel is mandated for Petitioner. Accordingly, the interests of justice do not  
8 require appointment of counsel at this time, and Petitioner's request is DENIED. This denial is  
9 without prejudice to the Court's sua sponte reconsideration should the Court find an evidentiary  
10 hearing necessary following consideration of the merits of Petitioner's claims.

11 This Order terminates Docket no. 2.

12 IT IS SO ORDERED.

13 Dated: 5/29/08

14   
15 SAUNDRA BROWN ARMSTRONG  
16 United States District Court Judge  
17  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 ROBERT E. VENTURA,

5 Plaintiff,

6 v.

7 DARREL ADAMS et al,

8 Defendant.  
9 \_\_\_\_\_/

Case Number: CV08-01708 SBA

**CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
11 Northern District of California.

12 That on May 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
15 in the Clerk's office.

16 Robert Elias Ventura V-80485  
17 CSP - Corcoran State Prison  
18 P.O. Box 3476  
19 Corcoran, CA 93212-3476

20 Dated: May 30, 2008

21 Richard W. Wieking, Clerk  
22 By: LISA R CLARK, Deputy Clerk  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE BY MAIL

I, Robert Elias Ventura, declare that I am over 18 years of age, and a party to the attached herein cause of action, that I reside at California State Prison at Corcoran, in the County of King, California.

My mailing address is: C.S.P - SHU. 4A-3L-41

P.O. Box 3476 CORCORAN CAL. 93212-3476

On APRIL 17, 2008, I delivered to prison officials for mailing, at the above address, the attached: Motion For Counsel And Application

For Waiver Of Court Fees And Costs. Supreme Court

CASE No. H032716 / CC455119; Declaration; Transcripts Rule 33(A)  
Rule 35(B)

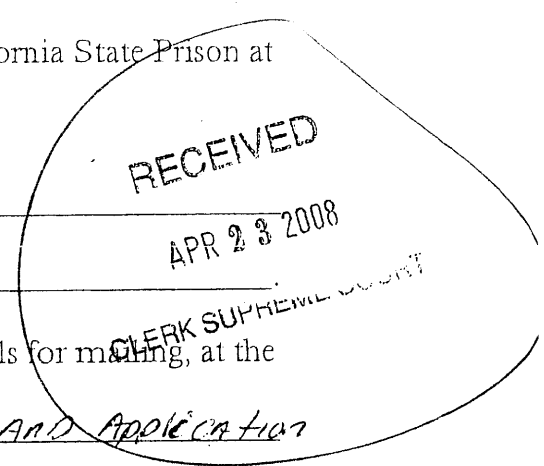
in sealed envelope(s), with postage fully prepaid, and addressed to the following:

|                                  |  |
|----------------------------------|--|
| (1) <u>Frederick K. O'HIRICH</u> | (2) <u>Attorney General</u>              |
| <u>350 Mc Allister Street</u>    | <u>455 Golden Gate Ave (Suite 11000)</u> |
| <u>San Francisco CA 94102</u>    | <u>San Francisco, CA 94102</u>           |

(3) \_\_\_\_\_ (4) \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 17 day of APRIL, 2008, at California State Prison, Corcoran.

Robert Ventura  
 In Pro Per



*Proof of Service – Mail*

**PROOF OF SERVICE**

Re: Case Number S162926

Case Title Ventura (Robert) on H.C. (review)

I hereby declare that I am a citizen of the United States, am over 18 years of age, and ~~am~~ am not a party in the above-entitled action. I am employed in ~~reside in~~ the County of San Francisco and my business ~~residence~~ address is 350 McAllister, room 1295, San Francisco, Ca 94102

On April 23, 2008, I served the attached document described as a petition for review

on the parties in the above-named case. I did this by enclosing true copies of the document in sealed envelopes with postage fully prepaid thereon. I then placed the envelopes in a U.S. Postal Service mailbox in San Francisco, California, addressed as follows:

Office of the Attorney General  
San Francisco  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, Ca 94102

COURT OF APPEAL  
SIXTH APPELLATE DISTRICT  
333 W. SANTA CLARA ST.  
SAN JOSE, CA 95113

I, Joseph Cornetta, declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2008, at 350 McAllister  
San Francisco, California.

Joseph Cornetta  
Signature

RECEIVED

S162926

Robert Ventura - CDCR # V80485  
 CSP-Corcoran SHU 4A 3L-3  
 P.O. Box 3476  
 Corcoran, CA. 93212-3476  
 In Propria Persona

IN THE CALIFORNIA SUPREME COURT

Robert Ventura  
 Petitioner,  
 On Habeas Corpus

NO. H032716 / NO. CC455114  
 REQUEST FOR APPOINTMENT  
 OF COUNSEL AND DECLARATION  
 OF INDIGENCY

I, Robert Ventura, declare that I am a petitioner to the above-referenced matter, that I am incarcerated at CSP-Corcoran SHU, and that I am indigent and unable to afford counsel. My total assets are \$00.00 and my income is \$00.00 per month.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. Government Code § 15421; Penal Code § 1240; Griffin v. Illinois (1956) 351 U.S. 12 [76 S.Ct. 585; 100 L.Ed. 891]; Douglas v. California (1963) 372 U.S. 353 [9 L.Ed. 2d 811]; In re Henderson (1964) 61 Cal.2d 541 [39 Cal.Rptr. 373].

In addition, when a court issues an order to show cause, counsel must be appointed for an indigent petitioner who request counsel. California Rules of Court, rule 4.551 (c)(2).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on APRIL 17, 2008.

*Robert Ventura*  
 Petitioner



COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FILED

MAR 24 2008

MICHAEL J. YERBY, CLERK

By \_\_\_\_\_ DEPUTY

In re ROBERT VENTURA,  
on Habeas Corpus.

H032716  
(Santa Clara County  
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., Mihara, J., and McAdams, J.,  
participated in this decision.)

Dated MAR 24 2008 BAMATTRE-MANOUKIAN, J. Acting P.J.

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK  
LOS ANGELES



## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

April 24, 2008

Robert Ventura, CDC# V-80485  
California State Prison, Corcoran  
P. O. Box 3476  
Corcoran, Ca 93212

Re: S162926 – Ventura (Robert) on H.C. (review)

Dear Mr. Ventura:

No action may be taken on your request to appoint counsel to represent you in the above-referenced case. The court does not appoint counsel in these matters unless review is granted. Should the court issue an order granting review, you will be notified and provided with the appropriate form to assist this office with the appointment of counsel to represent you.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

A handwritten signature in cursive script, reading "Joseph Cornetta".

By: Joseph Cornetta, Deputy Clerk

☐ SAN FRANCISCO 94102  
EARL WARREN BUILDING  
350 McALLISTER STREET  
(415) 865-7000  
  
☐ LOS ANGELES 90013  
RONALD REAGAN BUILDING  
300 SOUTH SPRING STREET  
(213) 830-7570

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

OFFICE OF THE STATE PUBLIC DEFENDER

221 Main Street, 10<sup>th</sup> Floor  
San Francisco, California 94105  
Telephone: (415) 904-5600  
Fax: (415) 904-5635



April 4, 2008

Mr. Robert Ventura  
V-80485  
P.O. Box 3476  
Corcoran, CA 93212

Dear Mr. Ventura:

This office has received your letter requesting our assistance in challenging your convictions for domestic violence and assault with a deadly weapon. I am sorry, but our office only represents people who have been sentenced to death and only in, and by appointment of, the California Supreme Court. We are not allowed to represent anyone else on any other matters.

I would recommend that you contact the appellate project serving Santa Clara County, where you were convicted. They should be able to provide you with the information you need about the process of challenging a conviction. The following is their contact information:

Sixth District Appellate Program  
100 N. Winchester Blvd., Suite 310  
Santa Clara, CA 95050  
408-241-6171

Again, I am sorry that this office cannot be of assistance to you. Best of luck with your case.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Delaine Renard", written over a circular stamp or seal.  
C. Delaine Renard  
Deputy State Public Defender

47

Robert Elias Ventura CDC # V-80485

CSP-CORCORAN 4A-3R-44

P.O. Box 3476

CORCORAN, CA. 93212-3476

E-filing

FILED  
06 MAR 28 PM 3:04  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA

Robert ELIAS Ventura

PLAINTIFF

No.

SBA

V.

ADAMS (WARDEN)

DEFENDANT

REQUEST FOR APPOINTMENT OF  
COUNSEL AND DECLARATION OF  
INDIGENCY IN SUPPORT

(PR)

I, Robert Elias Ventura, DECLARE THAT I AM A PETITIONER  
TO THE ABOVE-REFERENCED MATTER, THAT I AM INCARCERATED AT CSP-  
CORCORAN, AND THAT I AM INDIGENT AND ILLITERATE AND UNABLE TO  
AFFORD COUNSEL. MY TOTAL ASSETS ARE \$ 00.00 AND MY INCOME IS  
\$ 00.00 PER MONTH.

I HEREBY REQUEST THAT COUNSEL BE APPOINTED IN THIS MATTER SO  
THAT MY INTERESTS MAY BE PROTECTED BY THE PROFESSIONAL ASSISTANCE  
REQUIRED. IN ADDITION, WHEN A COURT ISSUES AN ORDER TO SHOW CAUSE,  
COUNSEL MUST BE APPOINTED FOR AN INDIGENT PETITIONER WHO REQUEST  
COUNSEL. (18 U.S.C. § 3006 A. (9).) IF AN EVIDENTIARY HEARING IS ORDERED,  
THIS DISCRETIONARY POWER BECOMES A MANDATORY RULE FOR APPOINTMENT.  
(FEDERAL HABEAS RULE 8 (c).) GENERAL COUNSEL SHOULD BE APPOINTED  
WHERE "FUNDAMENTAL FAIRNESS" REQUIRES IT. (see SCHULTZ V. WAINWIR

NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT.

United States District Court For THE  
NORTHERN District OF CALIFORNIA

FILED  
MAR 28 PM 3:03  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

ROBERT ELIAS VENTURA

PLAINTIFF

V.

DARREL ADAMS,

DEFENDANT.

Notice OF APPEAL

CV 08

1708

NO.

SBA

(PR)

Notice is HEREBY given THAT ROBERT ELIAS Ventura  
PLAINTIFF IN THE ABOVE NAMED CASE, HEREBY APPEAL to the  
UNITED STATES COURT OF APPEALS FOR THE SUPREME  
COURT OF CALIFORNIA FROM THE FINAL Judgment From  
AN ORDER (THE Petition For Review is Denied). SEE  
ATTACHED DOCUMENT..

ENTERED IN THIS ACTION ON THE 12 DAY OF MARCH,  
2008.

Respectfully Submitted  
Robert Ventura

DATE: March 21 2008

ROBERT VENTURA - CDCR # V-80485  
SP-CORCORAN (SHU) 4A 3L-3  
P.O. BOX 3476  
CORCORAN, CA. 93212-3476

41

In Pro Per

IN THE CALIFORNIA SUPREME COURT

COUNTY OF SAN FRANCISCO

In re

Robert Ventura

On Habeas Corpus

No. S160550

REQUEST FOR APPOINTMENT  
OF COUNSEL AND DECLARATION  
OF INDIGENCY  
**RECEIVED**

**MAR 3 - 2008**

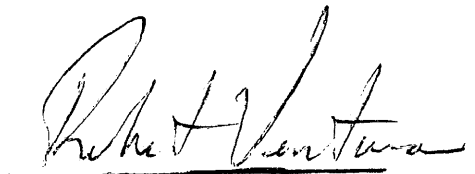
CLERK SUPREME COURT

I, Robert Ventura, declare that I am a petitioner to the above-referenced matter, that I am incarcerated at [place prison here], and that I am indigent and unable to afford counsel. My total assets are \$ 0 and my income is \$ 0 per month.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. In addition, when a court issues an order to show cause, counsel must be appointed for an indigent petitioner who requests counsel. California Rules of Court, rule 4.551 (c)(2).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 25, 2008.

\_\_\_\_\_



Petitioner



MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK  
LOS ANGELES



## Supreme Court of California

FREDERICK K. OHLRICH  
COURT ADMINISTRATOR AND  
CLERK OF THE SUPREME COURT

☒ SAN FRANCISCO 94102  
EARL WARREN BUILDING  
350 McALLISTER STREET  
(415) 865-7000

☐ LOS ANGELES 90013  
RONALD REAGAN BUILDING  
300 SOUTH SPRING STREET  
(213) 830-7570

January 24, 2008

Robert Ventura V-80485  
CSP- Corcoran  
P.O. Box 3476  
Corcoran, CA 93212-3476

Re: **H032325- VENTURA ON HABEAS CORPUS**

Dear Mr. Ventura:

The court does not appoint counsel for filing a petition for review. The record discloses that the Court of Appeal filed an order denying your petition on January 9, 2008. Under court rules, the last day a petition for review could be timely filed was January 19.

An original and ten legible typewritten copies of a petition for review are required. Each must have a copy of the Court of Appeal decision attached. Service of a copy on the Court of Appeal and on the Office of the Attorney General is also required.

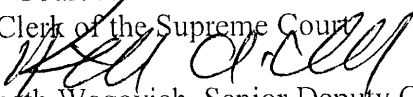
For good cause, the court may permit a late filing. In addition to the petition for review as described above, you must also submit an original only of an "Application for Relief from Default" which explains the reasons for failing to file a timely petition. The application must also contain the following signed declaration: "I declare under penalty of perjury that the above is true and correct."

After February 8, 2008, this court loses jurisdiction to consider or grant any relief of any nature in this case.

If you are unable to meet this deadline, you may file a habeas corpus petition. A form is enclosed.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

  
By: Kenneth Wagovich, Senior Deputy Clerk

Enclosure

MARY JAMESON  
AUTOMATIC APPEALS SUPERVISOR  
JORGE NAVARRETE  
SUPERVISING DEPUTY CLERK  
SAN FRANCISCO

NATALIE ROBINSON  
SUPERVISING DEPUTY CLERK  
LOS ANGELES



## Supreme Court of California

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300 SOUTH SPRING STREET  
(213) 830-7570

January 24, 2008

Robert Ventura V-80485  
CSP- Corcoran  
P.O. Box 3476  
Corcoran, CA 93212-3476

Re: **H032454- VENTURA ON HABEAS CORPUS**

Dear Mr. Ventura:

The court does not appoint counsel for filing a petition for review. The record discloses that the Court of Appeal filed an order denying your petition on January 8, 2008. Under court rules, the last day a petition for review could be timely filed was January 18.

An original and ten legible typewritten copies of a petition for review are required. Each must have a copy of the Court of Appeal decision attached. Service of a copy on the Court of Appeal and on the Office of the Attorney General is also required.

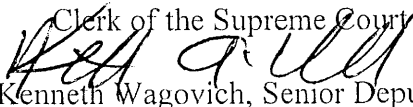
For good cause, the court may permit a late filing. In addition to the petition for review as described above, you must also submit an original only of an "Application for Relief from Default" which explains the reasons for failing to file a timely petition. The application must also contain the following signed declaration: "I declare under penalty of perjury that the above is true and correct."

After February 7, 2008, this court loses jurisdiction to consider or grant any relief of any nature in this case. \_\_\_\_\_

If you are unable to meet this deadline, you may file a habeas corpus petition. A form is enclosed.

Very truly yours,

FREDERICK K. OHLRICH  
Court Administrator and  
Clerk of the Supreme Court

By:  Kenneth Wagovich, Senior Deputy Clerk

Enclosure

32

**COPY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.

**FILED**

JAN 8 - 2008

MICHAEL J. YEHLY, Clerk

In re ROBERT VENTURA,  
  
on Habeas Corpus.

H032454 By \_\_\_\_\_  
(Santa Clara County DEPUTY  
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated JAN 8 - 2008 PREMO, J. Acting P.J.

**COPY**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.  
**FILED**

JAN 9 - 2008

MICHAEL J. YEHELY, Clerk

By DEPUTY

In re ROBERT VENTURA,  
  
on Habeas Corpus.

H032325  
(Santa Clara County  
Super. Ct. No. CC455119)

BY THE COURT:

The petition for writ of habeas corpus, seeking an extension of time to file an opening brief on "appeal," is denied without prejudice. There is no appeal from the denial of a habeas petition by the superior court; rather, the petitioner must file an original habeas petition in the reviewing court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

Petitioner's request for appointment of counsel is denied without prejudice.

(Elia, Acting P.J., and Duffy, J., participated in this decision.)

Dated JAN 9 - 2008 ELIA, J. Acting P.J.

13

## SIXTH DISTRICT APPELLATE PROGRAM

A Non-Profit Corporation

100 N Winchester Blvd., Suite 310  
Santa Clara, CA 95050

(408) 241-6171 - Main  
(408) 241-2877 - Fax

Executive Director  
*Michael A. Kresser*

Assistant Director  
*Dallas Sacher*

Law Office Manager  
*Yolanda Edwards*

Staff Attorneys  
*Lori A. Quick*  
*Vicki I. Firstman*  
*William M. Robinson*  
*Jonathan Grossman*  
*Paul Couenhoven*

January 7, 2008

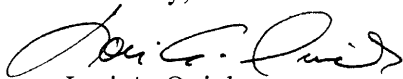
Robert Ventura  
V-80485  
Corcoran State Prison  
P.O. Box 3476  
Corcoran, CA 93212-3476

Dear Mr. Ventura,

I have received your letter postmarked January 4, 2008. It appears from your letter that you wish to file a petition for a writ of habeas corpus. As I wrote in my last letter, habeas petitions are considered civil proceedings, even if they arise from a criminal case. Generally, an indigent prisoner is not entitled to appointed counsel to assist with the preparation of a habeas petition. However, if an indigent prisoner files a habeas corpus petition and the court determines the petition states a prima facie case for relief, then due process considerations require the court to appoint counsel to represent the prisoner. (*People v. Barton* (1978) 21 Cal.3d 513, 519 fn. 3; *People v. Shipman* (1965) 62 Cal.2d 226, 232; Cal. Rules of Court, rule 4.551(c)(2).) It appears that you have already filed a habeas petition which was denied. Thus, you are not entitled to appointed counsel. (*People v. Clark* (1993) 5 Cal.4th 750, 783, fn. 20; *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356.) We do represent indigent defendants on direct appeal when appointed by the Court of Appeal. However, you were sentenced on May 11, 2005. A notice of appeal should have been filed no later than July 10, 2005, two and one-half years ago. (California Rules of Court, rule 8.308(a).) It would be pointless to ask for permission to file a late notice of appeal at this late date.

Typically, when people in your position write to us for help, we advise them to file a habeas petition and we send them the appropriate form. Because you have already filed a petition which was denied, and because we do not represent you on that petition, there is nothing we can do for you. I am sorry we cannot be of more assistance. I wish you the best of luck.

Sincerely,

  
Lori A. Quick  
Staff Attorney

## SIXTH DISTRICT APPELLATE PROGRAM

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Staff Attorneys  
*Lori A. Quick*  
*Vicki I. Firstman*  
*William M. Robinson*  
*Jonathan Grossman*  
*Paul Couenhoven*

December 28, 2007

  
Robert Ventura  
V-80485  
Corcoran State Prison  
P.O. Box 3476  
Corcoran, CA 93212-3476

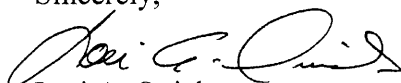
Dear Mr. Ventura,

We have received several documents from you: a petition for writ of habeas corpus filed on July 17, 2007; a handwritten opening brief; a letter from the Court of Appeal declining to file a document for noncompliance with the rules of court; a Superior Court order filed October 3, 2007 denying a petition for writ of habeas corpus; and a request for appointment of counsel. Please be advised as follows.

First of all, I cannot help you with a petition for writ of habeas corpus. Because this is considered a civil proceeding, you are not entitled to appointed counsel. (*People v. Clark* (1993) 5 Cal.4th 750, 783, fn. 20; *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356.) Although we do represent indigent defendants on direct appeal when appointed by the Court of Appeal, it appears from the paperwork you have sent that the time to file a notice of appeal is long past. Your habeas petition indicates that you were sentenced on May 11, 2005. This means you would have had to file a notice of appeal no later than July 10, 2005. (California Rules of Court, rule 8.308(a).) I can think of no reasonable justification to offer the Court for a failure to take action for two and one-half years, and therefore we cannot request permission to file a late notice of appeal.

I am sorry we could not be of more assistance. I wish you the best of luck.

Sincerely,

  
Lori A. Quick  
Staff Attorney



**FILED**

DEC 26 2007

KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa ClaraBY [Signature] DEPUTYSUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

In re )

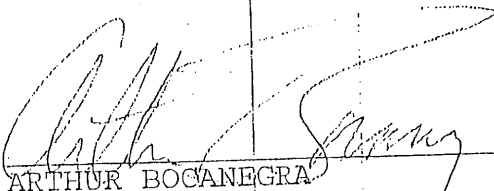
No. CC455119 )

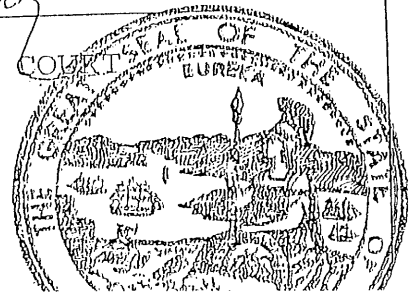
ROBERT ELIAS VENTURA, )

O R D E R )

On Motion for Documents )  
\_\_\_\_\_ )

ROBERT ELIAS VENTURA has submitted a motion to this Court requesting free copies of various documents, and/or reports contained in his case file, and/or transcripts of the proceedings, which led to his incarceration. The motion/request is DENIED. Petitioner's declaration of indigency, citations to rules of court, Constitutional principles, case law, or statutes, and/or "Application for Waiver of Court Fees and Costs," form is not applicable when, as here, the time for trial and appeal has passed and there is no matter currently pending and active before this Court. (See *People v. Markley* (2006) 138 Cal.App.4th 230, 240-243.)

DATED: 12/26, 2007
  
 ARTHUR BOCANEGRA  
 JUDGE OF THE SUPERIOR COURT

 cc: Petitioner  
 District Attorney  
 CJIC  
 Research (12-18A)


FILED

OCT 03 2007

KELLY TORRE  
 Chief Executive Officer  
 Superior Court of California, County of Santa Clara  
 BY [Signature] DEPUTY

## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF SANTA CLARA

In re

ROBERT VENTURA,

No.: CC455119

ORDER

ROBERT VENTURA, hereinafter Petitioner, has submitted a petition for writ of habeas corpus. Petitioner claims that the sentencing court violated due process by imposing enhancements on the basis of Petitioner's prior plea bargains. Petitioner also claims that his counsel for a 1989 prior was ineffective for not informing him of all the possible consequences of his plea and his counsel for the present offense was ineffective for not enforcing the terms of his prior plea bargains. In addition, Petitioner cites *California v. Cunningham* (2007) 127 S. Ct. 856 as a basis for his challenge to the court's imposition of consecutive sentences in this case.

Due Process

The case of *People v. Brady* (1995) 34 Cal.App.4th 65 dealt with,

1 and rejected, arguments that there is a due process violation in the  
2 application of the strike law.

3 Although the imposition of punishment which, after commission of  
4 a crime, is increased or somehow made more onerous violates the ex  
5 post facto clause of both the United States and California  
6 Constitutions (U.S. Const., art. I, § 10, cl. 1; Cal. Const., Art. I,  
7 §9), "[i]ncreased penalties for subsequent offenses . . .  
8 attributable to the defendant's status as a repeat offender . . .  
9 arise as an incident of the subsequent offense rather than  
10 constituting a penalty for the prior offense. [Citations.]" do not.  
11 (*People v. Weaver* (1984) 161 Cal.App.3d 119, 124 [207 Cal.Rptr. 419],  
12 quoting *In re Foss* (1974) 10 Cal.3d 910, 922 [112 Cal.Rptr. 649, 519  
13 P.2d 1073].) *People v. Brady* (1995) 34 Cal.App.4th 65, 72.

14 The defendant in *Brady* had a single strike and therefore his  
15 sentence was doubled and he was required to serve 80% of it. His  
16 "strike" had been committed prior to the passage of the three strikes  
17 law. That court rejected the same claim that Petitioner makes here,  
18 by concluding that at the time the defendant had committed the  
19 current offense the three strikes law "was in full force and effect.  
20 Such gave him notice that he would be treated more severely since he  
21 committed a new felony and had previously been convicted of a serious  
22 felony. That such 'status' would subject him to subsection (c)(5)'s  
23 credit limits was clearly spelled out. No due process or ex post  
24 facto violation can be shown." (*Id.*, see also *People v. Hatcher*  
25 (1995) 33 Cal.App.4th 1526.)

26 So too in the instant case, since as soon as the strike law came  
27 into effect Petitioner had the status of being a striker, Petitioner

1 the defendant has failed to establish any prejudice, then the  
2 performance prong need not be reached. (*Strickland v. Washington*,  
3 *supra*, 466 U.S. at 697.)

4 Petitioner's claim of ineffective assistance of his prior  
5 counsel rests on the assertion that he was not informed that his  
6 convictions could be used in future cases to enhance his sentence.  
7 However, as noted above, the "three strikes" law had not been enacted  
8 at the time of Petitioner's prior plea. Thus, counsel cannot be held  
9 ineffective for failing to inform Petitioner of a statutory scheme  
10 that was not yet in place.

#### 11 Imposition of Enhancements

12 Contrary to Petitioner's contention, his previous plea  
13 bargain(s) do not insulate him from being subjected to enhancement(s)  
14 based on the prior conviction(s). Petitioner was not being punished  
15 again for the same offense addressed by a previous plea bargain.  
16 Rather, Petitioner was punished for being a recidivist. "The purpose  
17 of section 667 is to punish repeat offenders regardless of whether  
18 they were imprisoned for their previous felony...to impose greater  
19 punishment upon recidivists who commit serious felonies." (*People v.*  
20 *Jones* (1993) 5 Cal.4th 1142; *People v. Medina* (1988) 206 Cal.App.3d  
21 986.) See also *People v. Bernal* (1994) 22 Cal.App.4th 1455, 1457,  
22 explaining:

23 When entering a guilty plea, the defendant must be  
24 advised of the direct consequences of the conviction.  
25 (*Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 604.)  
26 However, possible future use of a current conviction is  
27 not a direct consequence of the conviction. (*People v.*  
*Crosby* (1992) 3 Cal.App.4th 1352, 1356; see also *People*  
*v. Lewis* (1987) 191 Cal.App.3d 1288, 1301; *Hartman v.*  
*Municipal Court* (1973) 35 Cal.App.3d 891, 893.) A  
defendant need not be advised of the possible future  
conviction in the event the defendant commits

1 a later crime.


2 As there was no violation in sentencing Petitioner as a recidivist,  
3 there was no ineffective assistance of counsel, as alleged by  
4 Petitioner, for his attorney's failure to enforce the prior plea  
5 agreement.

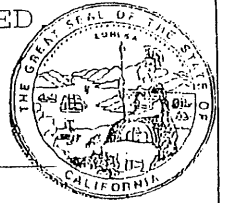
6 Cunningham

7 Petitioner claims that the court's imposition of consecutive  
8 terms violates the Supreme Court's recently articulated rule in  
9 *Cunningham v. California* (2007) 127 S. Ct. 856 interpreting its prior  
10 decision in *Blakely v. Washington* (2004) 542 U.S. 296. However the  
11 *Blakely* rule does not apply to the trial court's decision regarding  
12 imposition of consecutive or concurrent sentences. (*People v.*  
13 *Sandoval* (2007) 41 Cal.4th 825, 850-851; *People v. Sullivan* (2007)  
14 151 Cal.App.4th 524, 567-568.) Thus, Petitioner is not entitled to  
15 relief under *Cunningham*.

16 Petitioner's motion, and all requested relief, is DENIED

17  
18 DATED: 1 Oct, 2007

19   
PAUL BERNAL  
JUDGE OF THE SUPERIOR COURT



20 cc: Petitioner  
21 District Attorney  
22 Research (7-17B)  
23 CJIC  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY MAIL**

**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, ROBERT ELIAS Ventura V. 80485, declare:

I am over 18 years of age and a party to this action. I am a resident of C.S.P. SHU.

4A-3L-03 CORCORAN Prison,

in the county of CORCORAN,

State of California. My prison address is: P.O. Box 3476

CORCORAN CA 93212-3476

On 6-12-08  
(DATE)

I served the attached: Motion for Reconsideration And Amended

Motion for Appointment of Counsel. 28 U.S.C. 2255 8(c)  
No. C08-01708 SBA (DESCRIBE DOCUMENT) (PR)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

OFFICE OF THE CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
1301 CLAY STREET. 400 S. TOWER  
OAKLAND, CALIFORNIA 94612-5212

I declare under penalty of perjury under the laws of the United States of America that the foregoing

is true and correct.

Executed on 6-12-08  
(DATE)

Robert E. Ventura  
(DECLARANT'S SIGNATURE)



ROBERT Ventner V. 80485  
P.O. Box 3476  
CORCORAN CA 93212 - 3476

Office of the Clerk U.S. District Court  
Northern District of California  
1301 City Street. 400 S. Tower  
OAKLAND, California 94612-5212

LEGAL MAIL

CORCORAN STATE PRISON



Hester

0610800485  
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